

STATE OF INDIANA  
COUNTY OF ELKHART

) IN THE ELKHART CIRCUIT COURT  
) SS:  
) CAUSE NO. **20C01 08 10MI094**

IN RE: PARKLAND PLASTICS, INC. )

Respondent. )

AVC NO. 08-020

**FILED**

OCT 20 2008

CLERK ELKHART  
CIRCUIT COURT

**ASSURANCE OF VOLUNTARY COMPLIANCE**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Thomas Irons, and the Respondent, Parkland Plastics, Inc., enter into an Assurance of Voluntary Compliance ("Assurance") pursuant to Indiana Code § 24-5-0.5-7.

This Assurance shall not be considered an admission of a deceptive act for any purpose; however, any violation of the terms of this Assurance constitutes *prima facie* evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. Respondent is an Indiana corporation engaged in the solicitation and sale of wall and ceiling panel products to consumers and has a principal place of business located in Elkhart County at 104 Yoder Drive, Middlebury, Indiana 46540.
2. The terms of this Assurance apply to and are binding upon Respondent, its employees, agents, representatives, successors, and assigns. However, it is understood by the parties that the terms of this Assurance shall not apply to and are not binding upon Respondent's independent contractors.

3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of the Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code §4-6-9-4 and Ind. Code §24-5-0.5-1 *et seq.*

4. Respondent acknowledges it has been advised that the Attorney General's role in this matter is to serve as counsel for the State of Indiana and that the Office of the Attorney General has not given Respondent any legal advice regarding this matter. Respondent expressly acknowledges the Office of the Attorney General has previously advised the Respondent to secure legal counsel prior to entering into this Assurance for any legal advice Respondent requires.

#### **Definitions**

5. The term "Product" as used in this Assurance means and includes Respondent's wall and ceiling products including, but not limited to, the following: PLAS-TEX NRP; PLAS-TEX Polywall; PLAS-TEX Silk; Duro-Therm; InsuleX; Duro-Therm Lite; Duro-Lam; Duro-Lam Lite; Spectra Tile Finale; Spectra Tile Millennium; Spectra Tile Mystique, Spectra Tile Repertoire; PolyMAX Wainscot; and Duro-Base.

6. The term "Testing Protocol" as used in this Assurance means and includes a generally accepted procedure that results in and reports a smoke development index as well as a flame spread index for a particular product tested, and specifically includes, but is not limited to, the following: the Tunnel Test; ASTM E 84; UBC 8-1; NFPA 255; and ANSI/UL 723.

7. The term "Classification System" as used in this Assurance means and includes a generally accepted system of classifying a particular product as Class A, Class

I, Class B, Class II, Class C or Class III based on the smoke development index and flame spread index generated and reported by the Testing Protocol.

8. The term “Class” means and includes a Product’s classification as Class A Class I, Class B, Class II, Class C or Class III under the Testing Protocol’s Classification System.

9. The terms “Represent”, “Represents”, and “Representing” as used in this Assurance means and includes dissemination of information by Respondent either orally or in writing or via electronic means, including but not limited to any written, printed, typed, or other graphic or photographic representation or reproduction of any nature, advertising or promotional flyers, brochures, mailers, articles, literature, specifications, warranties, installation instructions, user guides, labels and packaging used for retail sale, test reports referring to surface burning characteristics or flame spreads or smoke development, and advertising or information or promotional material on Respondent’s websites or in trade magazines.

#### **Specific Injunctive Provisions**

10. Within one hundred and eighty (180) days of the execution of this Assurance, Respondent agrees to be in compliance with each of the following provisions:

a. Respondent will not Represent that a Product is of a particular Class unless the values for the Product’s flame spread index and smoke development index obtained and reported from the Testing Protocol meet the criteria of the Class as provided by the Testing Protocol’s applicable Classification System;<sup>1</sup>

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<sup>1</sup> For example, if the Testing Protocol on a particular Product resulted in a flame spread index of 75 and a smoke development index exceeding 450, and the following Classification System was applicable, Respondent would not Represent the Product as having either a “Class C” flame spread rating or a “Class C” smoke development rating.

b. Respondent will not Represent that a Product has undergone and passed or otherwise met the Testing Protocol or refer to the Testing Protocol unless the Product has been properly classified in accordance with the Testing Protocol's applicable Classification System;

c. Respondent will not Represent a Product is of a particular Class unless it meets the numerical ranges for flame spread and smoke development for that particular Class as provided by the Testing Protocol's applicable Classification System;

d. Respondent will not Represent a Product as Class C or Class II unless the flame spread and smoke development indices generated by the Testing Protocol fall within the flame spread and smoke development indices for a Class within the Testing Protocol's Classification System;

e. Respondent will not Represent or refer to "ASTM E-84", "Class A", "Class B", "Class C", "Class I", "Class II", "Class III", "Class A Flame Spread", "Class B Flames Spread", "Class C Flame Spread", "Class I Flame Spread", "Class II Flames Spread", "Class III Flame Spread", "Flame Spread ASTM E 84 Class A", "Flame Spread ASTM E 84 Class B", "Flame Spread ASTM E 84 Class C", "Flame Spread ASTM E 84 Class I", "Flame Spread ASTM E 84 Class II", "Flame Spread ASTM E 84 Class III", "Flammability ASTM E-84 Class A", "Flammability ASTM E-84 Class B",

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| Classification | Flame Spread Index | Smoke Development Index |
|----------------|--------------------|-------------------------|
| A              | 0-25               | 0-450                   |
| B              | 26-75              | 0-450                   |
| C              | 76-200             | 0-450                   |

“Flammability ASTM E-84 Class C”, “Flammability ASTM E-84 Class I”, “Flammability ASTM E-84 Class II”, “Flammability ASTM E-84 Class III”, “Class A Fire Rating”, “Class B Fire Rating”, “Class C Fire Rating”, “Class I Fire Rating”, “Class II Fire Rating”, “Class III Fire Rating”, “Pass ASTM E-84 Class A”, “Pass ASTM E-84 Class B”, “Pass ASTM E-84 Class C”, “Pass ASTM E-84 Class I”, “Pass ASTM E-84 Class II” and/or “Pass ASTM E-84 Class III” in connection with a Product unless the values of the flame development index and the smoke development index generated from the Testing Protocol meet all criteria of a particular class under the Testing Protocol’s applicable Classification System;

11. Within one hundred and eighty (180) days of the execution of this Assurance, Respondent will submit to the Office of the Attorney General a sworn statement certifying that the specific injunctive provisions of this Assurance have been satisfied.

#### **General Injunctive Provisions**

12. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from Representing the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which Respondent knows or reasonably should know it does not have.

13. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from Representing that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not, which Respondent knows or reasonably should know it does not have.

14. Respondent, in soliciting and/or contracting with consumers, agrees to refrain from Representing that Respondent has a sponsorship, approval, or affiliation in a consumer transaction it does not have, and which the Respondent knows or reasonably should know it does not have.

15. Respondent, in soliciting and/or contracting with consumers, agrees to comply with the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1, *et seq.*

16. Subsequent to submitting the sworn statement referred to in paragraph 11 above, Respondent agrees to allow the Office of the Attorney General access to relevant and non-privileged information, records, testing reports, etc. within the control of Respondent to ensure compliance with the specific and general injunctive provisions described in paragraphs 10, 12, 13, 14 and 15 of this Assurance.

#### **Additional Provisions**

17. Upon execution of this Assurance, Respondent shall immediately pay costs in the amount of One Thousand Five Hundred Dollars (\$1,500.00) to the Office of the Attorney General.

18. Respondent shall not represent that the Office of the Attorney General approves or endorses Respondent's past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

19. The Office of the Attorney General shall file this Assurance with the Circuit Court of Elkhart County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

DATED this 14<sup>th</sup> day of October, 2008.

STATE OF INDIANA

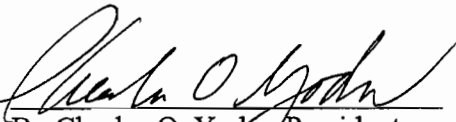
STEVE CARTER  
Attorney General of Indiana

By: 

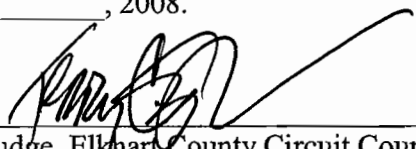
Thomas Irons  
Deputy Attorney General  
Atty. No. 19822-49  
Office of the Attorney General  
302 W. Washington, 5<sup>th</sup> Floor  
Indianapolis, Indiana 46204  
Telephone: (317) 233-9923

RESPONDENT

Parkland Plastics, Inc.

  
By Charles O. Yoder, President

APPROVED this 20<sup>th</sup> day of October, 2008.

  
Judge, Elkhart County Circuit Court

Distribution:

Tom Irons  
Office of Attorney General  
Consumer Protection Division  
302 W. Washington St., 5<sup>th</sup> Floor  
Indianapolis, IN 46204

Jeffrey L. Lund  
Yoder, Ainlay, Ulmer & Buckingham, LLP  
130 North Main Street  
P.O. Box 575  
Goshen, Indiana 46527-0575



CCS ENTRY FORM

*Circuit*  
ELKHART SUPERIOR COURT

File Stamp Here

CAUSE NUMBER: **20C01 08 10 MIO 94**

**FILED**

CAPTION: STATE OF INDIANA  
v.  
PARKLAND PLASTICS, INC.

OCT 20 2008

CLERK ELKHART  
CIRCUIT COURT

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

The Plaintiff, State of Indiana, by Deputy Attorney General Thomas E. Irons, files an Appearance and Assurance of Voluntary Compliance.

Submitted by: \_\_\_\_\_:

Thomas Irons  
Atty. No. 19822-49  
302 West Washington Street  
Indiana Government Center South, 5th Floor  
Indianapolis, IN 46204-2770  
Telephone: 317/233-9923  
Party Represented: State of Indiana

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(TO BE DESIGNATED BY THE COURT)

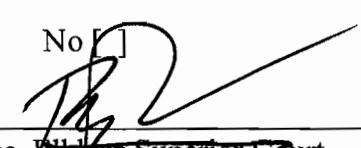
This CCS Entry Form shall be:

- ☐ Placed in case filed
- ☐ Discarded after entry on the CCS
- ☐ Mailed to all counsel by: \_\_\_\_\_ Counsel \_\_\_\_\_ Clerk \_\_\_\_\_ Court
- ☐ There is no attached order; or

The attached order shall be placed in the RJO: Yes ☐ No ☐

DATE:

APPROVED

  
\_\_\_\_\_  
Judge, Elkhart Superior Court

STATE OF INDIANA  
COUNTY OF ELKHART

) IN THE ELKHART <sup>Circuit</sup> ~~SUPERIOR~~ COURT  
) SS:  
) CAUSE NO. 20C01 08 10 MI 094

IN RE: PARKLAND PLASTICS, INC.

Respondent.

)  
) AVC NO. 08-020  
)

**FILED**

OCT 20 2008

CLERK ELKHART  
CIRCUIT COURT

**APPEARANCE BY ATTORNEY IN CIVIL CASE**

**Party Classification:** Initiating

1. The undersigned attorney now appears in this case for the following party: State of Indiana
2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

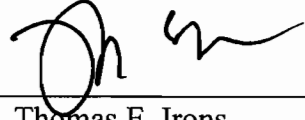
|          |                                     |                   |                |
|----------|-------------------------------------|-------------------|----------------|
| Name:    | Thomas E. Irons                     | Atty. No.:        | 19822-49       |
| Address: | Office of the Attorney General      | Phone:            | (317) 233-9923 |
|          | Indiana Government Center South     | Fax:              | (317) 233-4393 |
|          | 302 W. Washington Street, 5th Floor | Computer Address: | n/a            |
|          | Indianapolis, Indiana 46204         |                   |                |

3. There are other party members: Yes \_\_\_ No X
4. *If first initiating party filing this case*, the Clerk is requested to assign this case the following Case Type under Administrative Rule 8(b)(3): Miscellaneous
5. I will accept service by FAX at the above noted number: Yes \_\_\_ No X
6. This case involves support issues: Yes \_\_\_ No X
7. There are related cases: Yes \_\_\_ No X
8. This form has been served on all other parties. Certificate of service appears below:  
Yes \_\_\_ No X

9. Additional information required by local rule: N/A

STEVE CARTER  
Indiana Attorney General

By: \_\_\_\_\_



Thomas E. Irons  
Deputy Attorney General  
Attorney No. 19822-49

Office of the Attorney General  
Indiana Government Center South  
302 West Washington Street, Fifth Floor  
Indianapolis, Indiana 46204  
(317) 233-9923